

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 5917 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE S.M.SONI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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STATE OF GUJARAT

Versus

MEHADI HASAN @ MAHNDIYO

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Appearance:

Mr.K.P.Raval, A.P.P. for Petitioner.

SERVED for Respondent No. 1

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CORAM : MR.JUSTICE S.M.SONI

Date of decision: 05/07/96

ORAL JUDGEMENT

This application under Section 439(2) of the Code of Criminal Procedure, 1973 ("Code" for short) is filed against the order passed by the learned Additional City Sessions Judge, Ahmedabad in Criminal Misc.Application no.1711 of 1994 on 1st September, 1994 whereby the learned Judge has granted bail.

The learned A.P.P. Mr. Raval contended before the Court that the learned Judge has not taken into consideration the previous offence committed on the same day and also the test identification parade held and the accused being identified. In my opinion, these are the questions of fact which cannot be gone into for cancellation of bail. What is required to be established for cancellation of bail is settled in the case of DOLATRAM AND OTHERS VS. STATE OF HARYANA reported in (1995) 1 Supreme Court Cases 349 wherein the Supreme Court has held in paragraph 4 as under:

"Rejection of bail in a non-bailable case at the initial stage and the cancellation of bail so granted, have to be considered and dealt with on different basis. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail, already granted. Generally speaking, the grounds for cancellation of bail, broadly (illustrative and not exhaustive) are interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. The satisfaction of the court, on the basis of material placed on the record of the possibility of the accused absconding is yet another reason justifying the cancellation of bail. However, bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial. These principles, it appears, were lost sight of by the High Court when it decided to cancel the bail, already granted. The High Court, it appears to us overlooked the distinction of the factors relevant for rejecting bail in a non-bailable case in the first instance and the cancellation of bail already granted."

As the case of the prosecution does not fall within the purview of requirements as stated in DOLATRAM'S case (Supra), the petition is liable to be dismissed and is hereby dismissed. Rule is discharged.

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